

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

JOHN S. LINKENAUGER, II,

Plaintiff,

v.

Civil Action No. 2:19-cv-00718

SOUTH CENTRAL REGIONAL JAIL  
AND CORRECTIONAL FACILITY AUTHORITY,  
WEST VIRGINIA REGIONAL JAILS, and  
TRINITY,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending are Plaintiff John S. Linkenauger, II's Application to Proceed Without Prepayment of Fees and Costs (ECF 1) and Complaint (ECF 2), both filed May 3, 2019.

This action was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Tinsley filed his PF&R (ECF 4) on September 24, 2021. Magistrate Judge Tinsley recommended that the court deny Mr. Linkenauger's Application to Proceed Without Prepayment of Fees and Costs and dismiss this matter pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) for failure to state a claim upon which relief may be granted.

The court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") (Emphasis added). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal the court's order. See 28 U.S.C. § 636(b)(1); see also United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on October 12, 2021. No objections were filed.

Accordingly, it is ORDERED that the findings made in the PF&R (ECF 4) are ADOPTED by the court and incorporated herein. It is further ORDERED that Mr. Linkenauger's Application to Proceed Without Prepayment of Fees and Costs (ECF 1) is DENIED and this matter is DISMISSED pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) for failure to state a claim upon which relief may be granted and REMOVED from the docket.

The Clerk is directed to transmit copies of this order to all counsel of record and to any unrepresented parties.

ENTER: October 22, 2021



John T. Copenhaver, Jr.  
Senior United States District Judge